

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

ROBERT MC CURRY, MELANIE	)	CASE NO. 8CV08-
MC CURRY, and CHRISTOPHER	)	
MC CURRY,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	
	)	
JERALD SWANSON, RICHARD	)	COMPLAINT AND
MARTINEZ, ROBERT WONDRA, PAUL	)	REQUEST FOR JURY TRIAL
LATCHAR, PAUL MILONE, BRETT	)	
BECKER, RYAN SEDLACEK, EDITH	)	
ANDERSEN, and JOHN DOES and	)	
JANE DOES, Individually and in Their	)	
Official Capacities As Police Officers for the	)	
CITY OF OMAHA.	)	
	)	
Defendants.	)	
	)	

COMES NOW the Plaintiffs and for their claims for relief against Defendants,  
states and alleges as follows:

**JURISDICTION**

1. Plaintiffs bring this action to redress violations by the Defendants of Plaintiffs' rights under the Constitutions and laws of the United States and the State of Nebraska.
2. This is an action pursuant to 42 U.S.C. §1983 and 20-148 Neb. Rev. Stat. to redress the deprivations under the color of statute, ordinance, regulation, custom or usage of rights, privileges and immunities secured to the Plaintiff by the Fourteenth Amendment to the Constitution of the United States.
3. Jurisdiction is conferred on this Court by 28 U.S.C. §§1331 and 1343,

which confer original jurisdiction on Federal District Courts in suits to redress the deprivation of rights, privileges and immunities as stated in paragraph two above including the pendent state claims set forth herein.

4. At all times relevant to this Complaint, Defendants acted under color and pretense of the law to wit: under color of the state statutes, Omaha city ordinances, regulations, customs and usages of the City of Omaha and the State of Nebraska.

5. At all times relevant to this Complaint, Defendants engaged in the illegal conduct herein mentioned to the injury of Plaintiffs and deprived Plaintiffs of their rights, privileges and immunities secured to them by the Fourteenth Amendment of the Constitution of the United States and the State of Nebraska.

### **PARTIES**

6. Plaintiffs are now and at all times mentioned were citizens of the United States and residents of Omaha, Douglas County, Nebraska.

7. Defendants were at all times material to this action agents, servants and employees of the City of Omaha working for the police department. Defendants are sued individually and in their official capacities. Defendant City of Omaha is sued separately for the acts set forth herein. John Does and Jane Does are those persons whose names are not presently known but whom were involved in the events listed below.

### **FACTS COMMON TO ALL CLAIMS**

8. On July 24, 2007, there was a shooting at a park near Plaintiffs' house. While Plaintiffs were sitting on their porch in plain view and in daylight, Defendants falsely accused Plaintiffs of hiding the shooting suspects. Plaintiffs indicated that was not true yet gave permission for the Defendants to search the house; where no suspects were

found. Instead of just trying to find out if the suspects were actually present in Defendants' house, Defendants then started to go through Plaintiffs' drawers and other personal property unrelated to determining if any suspects were in the house. Once Defendants searched the house and no suspects were found, Plaintiffs in no uncertain terms told Defendants to leave especially since they had not given permission to rifle through their personal property. No illegal property was found at that time either.

9. On August 2, 2007, Defendants returned this time holding a defective search warrant which was fatally defective because it did not list what property was being looked for; a conclusion which Russ Mayer from the U.S. Attorneys Office reached as well when he dropped any charges for the one item that was seized on this day (i.e. a gun belonging to Plaintiff Christopher Mc Curry).

10. While executing this fatally defective search warrant, Defendants knocked down the front door and proceeded to engage in a commando style SWAT team assault by approximately 50 members of the Omaha Police Department on Defendants' house by throwing people to the ground, destroying many items of personal property, handcuffing not only Plaintiff Robert McCurry but his two adult guests, Plaintiff Christopher, and two others as well for about 3 hours. As the police entered the house, Defendant Bremer made the cryptic comment that **“you should have let me search your fucking house when I was here before.”**

11. Defendants then ripped holes in the walls, destroyed glass tables (while allowing Plaintiffs' 3 year old to walk around the shards of glass), tore up family pictures (and made crude comments about pictures in which Plaintiff Melanie McCurry was in

swimsuits when she was much younger), scratched up an antique buffet, and basically ransacked the entire house.

12. That Plaintiffs further engaged in protected actions in that Plaintiffs had--- prior to the SWAT team invasion---often called Ritchie Martinez of the City of Omaha gang unit to provide information about possible criminal suspects in the park by Plaintiffs' house. They had also previously and subsequently complained to Gonzalez about police brutality of minors in the neighborhood as Plaintiffs have been witnesses to many of these events so Defendants retaliated not only for not allowing the police to ransack the house on July 24, 2007 but also for complaining about prior actions of the City of Omaha's police officers.

13. Additional retaliation by Defendants has occurred in the forms of:
- a. Superiors telling Plaintiffs' foster son---who is a member of the Omaha Police Department---to stay away from Plaintiffs (and then later terminating him);
  - b. Plaintiff Melanie being pulled over in her car by Officer Mahoney and then told that she did not know what was going on in her own house and she was basically humiliated;
  - c. The parties' son Aaron has been verbally abused by the OPD officer at his school starting in the fall 2007 by telling the son that he knew "all about what was going on in that house" and that he was sure that the young son was going to turn out "just like Chris" (the older brother);
  - d. Plaintiffs being told by Defendants that "if something happens at your house, don't call us (the police)."

14. Prior to the illegal search and seizure of August 2, 2007, Defendants went to the extraordinary length of providing a false police report to the State of Nebraska's Child and Protective Services and to Health and Human Services. That false report stated that Plaintiff Robert McCurry worked in a bar (he does not and never has) and that he sells drugs. In fact, it was CPS which tipped off Plaintiffs to this false report and advised Plaintiffs to seek legal representation prior to the illegal search and seizure. Moreover, CPS committed to writing letters dated August 20, 2007 and August 21, 2007 stating that the Defendants' accusations against Plaintiffs "were unfounded."

15. Even forgetting that the warrant was fatally defective on its face, upon information and belief, there were no "concerned neighbors" making negative reports about Plaintiffs as no neighbors complained or provided any information which could have been used to obtain the warrant. This is also consistent with Defendants' attempt to tell the neighbors that Plaintiffs are "bad people" and involved with drugs, gangs, and killings. Apparently, Defendants were not happy that the neighbors went to bat for Plaintiffs and the neighbors told them that they did not believe such allegations and then swore out a false search warrant.

16. That the City of Omaha and each supervisory Defendant are liable under 42 U.S.C. 1983 for the improper training and supervision of the non-supervisory Defendants with respect to failing to train their officers that persons engaged in protected activities who are aiding third parties and not violating any laws should not subject to being assaulted, taken to the ground, held against their will, and their property damaged so as to also cause the injuries set forth herein.

17. As a direct and proximate cause of the foregoing, Plaintiffs suffered the

following injuries: Property damages, property seized and not returned after the false and fraudulent federal charge was dismissed, lost income, emotional distress, and medical care related to the trauma of these events.

**18.** That the pendent state claims include assault, battery, trespass, and false imprisonment by Defendants and the tort of outrage as well.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiffs respectfully request judgment against Defendants:

A) Declaring that the acts of the Defendants hereinbefore alleged, violated the Constitution of and laws of the United States and the State of Nebraska;

B) Awarding Plaintiffs judgment for special damages which have been incurred or will accrue in the future;

C) Awarding compensatory, emotional distress, pain and suffering, and punitive damages for the violation of said rights;

D) Awarding Plaintiffs their costs in this action, including reasonable attorney fees;

E) For such other and further relief as this Court may deem just and proper.

**REQUEST FOR JURY TRIAL**

Plaintiffs hereby request that a Jury Trial of this matter be held in Omaha, Nebraska.

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